

Appl. No. 10/732,758
Amdt. dated April 9, 2007
Reply to Office Action of January 8, 2007

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REMARKS/ARGUMENTS

Claims 1-43 were presented for the Examiner's consideration. Claims 34-37 are withdrawn and claims 7 and 21 are canceled. By this Amendment, claims 1, 19, 30 and 38 are amended. Thus, claims 1-6, 8-20, 22-33 and 38-43 are currently pending in the application. Support for this Amendment is found in the specification at page 6, lines 10-15 and lines 22-35; Fig. 3; and in the claims as originally filed. No new matter is added.

I. 35 U.S.C. 102 Rejections

Claims 19-20 and 26-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Kelly et al. (U.S. Pat. No. 5,913,424). The rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

For a prior art reference to anticipate in terms of 35 U.S.C. 102, every element of the claimed invention must be identically shown in a single reference. Applicants respectfully submit that the cited reference does not anticipate the claims because the reference does not disclose all of the claim limitations.

Kelly teaches a reusable storage and display tray for bottles or cans having labels on the outside surface thereof. The side and end walls are formed by posts or pillars equally spaced around the perimeter of the bottom wall (See Abstract, Fig. 1, and Col. 2, lines 1-50).

Applicants' representatives have reviewed Kelly and have been unable to locate any teaching or suggestion of a package insert that is configured to receive a stack of flexible articles, wherein the folded edges of the flexible articles are substantially flush with the upper edges of the package insert and each flexible article is in communication with at least one other flexible article when the flexible articles are received by the generally u-shaped channel as required by independent claim 19.

Instead, Kelly teaches that each of its cans and/or bottles are located within a patterned member or square. The patterned members are defined by longitudinal and lateral ribs. Each bottle or can sits within each patterned member on a circular support and does not come into communication with another bottle or can as the circular supports are maintained within the confines of the longitudinal and lateral ribs. The patterned members are recessed on the bottom in order to align the trays on the

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tops of the cans or bottles (See Col. 1, lines 38-42). Additionally, the bottles and/or cans of Kelly extend beyond the upper boundaries of the pillars of the tray thereby creating a space when two trays are stacked upon each other, the space being necessary for the purchaser to recognize the label or product displayed in the space between trays (See Col. 2, lines

Conversely, independent claim 19 requires that each flexible article be in communication with at least one other flexible article and that they be substantially flush with the upper edges of the package insert. Importantly, this provides structural support to each flexible article and prevents bending or deformation of the flexible articles when they are stacked on top of packages or package inserts containing additional flexible articles.

The Office Action states that Kelly teaches that the package insert is capable of being configured to receive a stack of flexible articles. Applicants' representatives respectfully disagree. As stated above, Kelly teaches patterned members or squares which enclose individual bottles or cans that do not come into communication with each other. Thus, the bottles in each tray are not stacked together. Kelly's stack is only formed when one tray is placed upon another tray, but no individual tray is configured to receive a stack of bottles or cans. Additionally, Applicants' have not claimed the capability of configuring a package insert but have claimed a package insert that is already configured to receive a stack of flexible articles. Notwithstanding this fact, it is believed that Kelly is not even capable of being configured to receive a stack of flexible articles because configuration to receive a stack of flexible articles would require removal of the recessed patterned members or squares which are necessary for the alignment of trays on the tops of cans or bottles. This would render Kelly inoperable for its intended purpose.

A review of Kelly has failed to reveal any teaching or suggestion of a package insert that is configured to receive a stack of flexible articles, wherein the folded edges of the flexible articles are substantially flush with the upper edges of the package insert and each flexible article is in communication with at least one other flexible article when the flexible articles are received by the generally u-shaped channel. Thus, it is Applicants' position that Kelly does not teach all of the limitations of independent claim 19. Moreover, the limitations of independent claim 19 would not be obvious to one of ordinary skill in the art for at least the reasons outlined above.

Claims 30 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Rocchi et al. (U.S. Pat. No. 3,048,268). The rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

Rocchi teaches a package for mounting and packaging electrical components such as resistors, capacitors, and rectifiers. See Col. 1, lines 20-25.

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Applicants' representatives have reviewed Rocchi and have been unable to locate any teaching or suggestion of a blank for forming a package insert wherein the package insert has a side wall panel with at least one cut-out and the at least one cut-out is rectangular in shape as required by amended independent claim 30.

Instead, Rocchi teaches that its cut-outs have V-shaped notches. These V-shaped notches are necessary for placing lead electrical wires through holes in its package. In this regard, the V-shaped notches guide the lead wires to slits and the slits mechanically lock and hold the electrical components on the strip (See Col. 3, lines 5-15 and Fig. 1).

Conversely, independent claim 30 requires that its cut outs be rectangular shaped. The rectangular shape is important because it enhances the view of any flexible articles located within the channel of the insert.

Thus, a review of Rocchi has failed to reveal any teaching or suggestion of a blank for forming a package insert wherein the package insert has a side wall panel with at least one cut-out and the at least one cut-out is rectangular in shape as required by amended independent claim 30. Therefore, it is Applicants' position that Rocchi does not teach all of the limitations of independent claim 30. Moreover, the limitations of independent claim 30 would not be obvious to one of ordinary skill in the art for at least the reasons outlined above.

II. 35 U.S.C. 103 Rejections

Claims 1, 2, 6, and 8-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly et al. (U.S. Pat. No. 5,913,424) in view of Hobbs (U.S. Pat. No. 3,650,395). The rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

With respect to the rejection under 35 U.S.C. § 103(a), it is well settled that teachings of a reference can be modified only when there is some objective teaching or suggestion in the reference itself or knowledge generally available to one of ordinary skill in the art as to the desirability or incentive of such a modification. See MPEP §2143. If the prior art provides no reason for one of ordinary skill in the art to modify the prior art as taught by the claimed invention, the modification would not have been obvious.

It is the Applicants' position that the Patent and Trademark Office has failed to establish prima facie obviousness with respect to the teachings of the references.

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As discussed above, Kelly teaches a reusable storage and display tray for bottles or cans having labels on the outside surface thereof. The side and end walls are formed by posts or pillars equally spaced around the perimeter of the bottom wall (See Abstract, Fig. 1, and Col. 2, lines 1-50).

Applicants' representatives have reviewed Kelly and have been unable to locate any teaching or suggestion of flexible articles wherein the folded edges of the flexible articles are substantially flush with the upper edges of the package insert and each flexible article is in communication with at least one other flexible article within the generally u-shaped channel as required by amended independent claim 1.

Hobbs has been cited in an attempt to overcome the deficiencies of Kelly. Like Kelly, a review of Hobbs has failed to reveal any teaching or suggestion of a package of flexible articles wherein the folded edges of the flexible articles are substantially flush with the upper edges of the package insert and each flexible article is in communication with at least one other flexible article within the generally u-shaped channel as required by amended independent claim 1.

Therefore Hobbs is at least as deficient as the primary reference. As such, the relevance of Hobbs is unclear.

Notwithstanding the deficiencies of Hobbs, there would have been no motivation for one of ordinary skill in the art to modify Kelly with Hobbs to create Applicants' invention.

Hobbs teaches a shrink wrapped package having reinforcement portions located away from the sides of the package (See Fig. 2 and Col. 2, lines 8-35. Kelly teaches a tray having pillars on the corners (including sides) of the tray. One of ordinary skill in the art would not have been motivated to modify Kelly by replacing its pillars with Hobbs reinforcement portions because Kelly's pillars are strategically placed to prevent collapse or misalignment of the upper tray on the lower tray and they retain the bottles or cans in the tray (See Col. 2, lines 40-50). Further, one of ordinary skill in the art would not have been motivated to place Hobbs' shrink wrap around the tray of Kelly because it would block access to the recesses within the patterned members of Kelly. As with Kelly's pillars, these recesses are necessary in order to align the trays on the tops of the cans or bottles (See. Col. 1, lines 38-41).

Accordingly, it is the Applicants' position that the applied reference is insufficient to establish prima facie obviousness and that the Examiner's rejection on this ground is untenable and should be withdrawn.

Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly et al. (U.S. Pat. No. 5,913,424) in view of Hobbs (U.S. Pat. No. 3,650,395) as applied to claim 1 above and further in

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view of Hammett (U.S. D469,255). The rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

As discussed above, Applicants' representatives have reviewed both Kelly and Hobbs and have been unable to locate any teaching or suggestion of flexible articles wherein the folded edges of the flexible articles are substantially flush with the upper edges of the package insert and each flexible article is in communication with at least one other flexible article within the generally U-shaped channel as required by amended independent claim 1.

Hammett has been cited in an attempt to overcome the deficiencies of Kelly and Hobbs. Like Kelly and Hobbs, a review of Hammett has failed to reveal any teaching or suggestion of flexible articles wherein the folded edges of the flexible articles are substantially flush with the upper edges of the package insert and each flexible article is in communication with at least one other flexible article within the generally u-shaped channel as required by amended independent claim 1.

Therefore, Hammett is at least as deficient as Kelly and Hobbs. As such, the relevance of Hammett is unclear.

Notwithstanding the deficiencies of Hammett, there would have been no motivation for one of ordinary skill in the art to modify Kelly or Hobbs (individually or collectively) with Hammett to create Applicants' invention.

Hammett is a design patent which illustrates a beverage tray. The beverage tray has rounded projections extending from the bottom of the tray and it lacks circular depressions within the bottom of the tray (See Figs. 1-5). One of ordinary skill in the art would not have been motivated to modify Kelly's pillars to incorporate Hammett's rounded edges because Kelly's pillars are strategically placed and shaped to prevent collapse or misalignment of the upper tray on the lower tray and they retain the bottles or cans in the tray (See Col. 2, lines 40-50). Further, one of ordinary skill in the art would not have been motivated to modify Hobbs' circular depressions on the bottom of the tray and replacing them with the configuration on the bottom of Hammett's beverage tray because Hobbs' circular depressions are necessary to receive the bottoms of ketchup bottles (See Col. 2, lines 10-20).

Accordingly, it is the Applicants' position that the applied reference is insufficient to establish prima facie obviousness and that the Examiner's rejection on this ground is untenable and should be withdrawn.

Claims 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly et al. (U.S. Pat. No. 5,913,424) in view of Hammett (US D469,255). The rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

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As discussed above, Applicants' representatives have reviewed Kelly and have been unable to locate any teaching or suggestion of a package insert that is configured to receive a stack of flexible articles, wherein the folded edges of the flexible articles are substantially flush with the upper edges of the package insert and each flexible article is in communication with at least one other flexible article when the flexible articles are received by the generally u-shaped channel as required by independent claim 19.

Hammett has been cited in an attempt to overcome the deficiencies of Kelly. Like Kelly, a review of Hammett has failed to reveal any teaching or suggestion of a package insert that is configured to receive a stack of flexible articles, wherein the folded edges of the flexible articles are substantially flush with the upper edges of the package insert and each flexible article is in communication with at least one other flexible article when the flexible articles are received by the generally U-shaped channel as required by independent claim 19.

Therefore, Hammett is at least as deficient as Kelly. As such, the relevance of Hammett is unclear.

Notwithstanding the deficiencies of Hammett, there would have been no motivation for one of ordinary skill in the art to modify Kelly with Hammett to create Applicants' invention.

Hammett is a design patent which illustrates a beverage tray. The beverage tray has rounded projections extending from the bottom of the tray and it lacks circular depressions within the bottom of the tray (See Figs. 1-5). One of ordinary skill in the art would not have been motivated to modify Kelly's pillars to incorporate Hammett's rounded edges because Kelly's pillars are strategically placed and shaped to prevent collapse or misalignment of the upper tray on the lower tray and they retain the bottles or cans in the tray (See Col. 2, lines 40-50).

Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly et al. (U.S. Pat. No. 5,913,424). The rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

As already discussed above, Applicants' representatives have reviewed Kelly and have been unable to locate any teaching or suggestion of a package insert that is configured to receive a stack of flexible articles, wherein the folded edges of the flexible articles are substantially flush with the upper edges of the package insert and each flexible article is in communication with at least one other flexible article when the flexible articles are received by the generally U-shaped channel as required by independent claim 19.

Further, as already discussed above, the limitations of independent claim 19, from which claim 29 depends, were not obvious to one of ordinary skill in the art in view of the teachings of Kelly.

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Accordingly, it is the Applicants' position that the applied reference is insufficient to establish prima facie obviousness and that the Examiner's rejection on this ground is untenable and should be withdrawn.

Claims 38-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly et al. (U.S. Pat. No. 5,913,424) in view of Hobbs (U.S. Pat. No. 3,650,395) and Hammett (U.S. D469,255). The rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

Applicants' representatives have reviewed Kelly and have been unable to locate any teaching or suggestion of flexible articles wherein the folded edges of the flexible articles are substantially flush with the upper edges of the package insert and each flexible article is in communication with at least one other flexible article within the generally u-shaped channel as required by amended independent claim 38.

Hobbs and Hammett have both been cited in an attempt to overcome the deficiencies of Kelly. Like Kelly, a review of Hobbs and Hammett has failed to reveal any teaching or suggestion of a package of flexible articles wherein the folded edges of the flexible articles are substantially flush with the upper edges of the package insert and each flexible article is in communication with at least one other flexible article within the generally U-shaped channel as required by amended independent claim 38.

Therefore, both Hobbs and Hammett are at least as deficient as Kelly. As such, the relevance of Hobbs and Hammett are unclear.

Notwithstanding the deficiencies of Hobbs and Hammett, there would have been no motivation for one of ordinary skill in the art to modify Kelly with Hobbs or Hammett to create Applicants' invention.

Hobbs teaches a shrink wrapped package having reinforcement portions located away from the sides of the package (See Fig. 2 and Col. 2, lines 8-35. Kelly teaches a tray having pillars on the corners (including sides) of the tray. One of ordinary skill in the art would not have been motivated to modify Kelly by replacing its pillars with Hobbs reinforcement portions because Kelly's pillars are strategically placed to prevent collapse or misalignment of the upper tray on the lower tray and they retain the bottles or cans in the tray (See Col. 2, lines 40-50). Further, one of ordinary skill in the art would not have been motivated to place Hobbs' shrink wrap around the tray of Kelly because it would block access to the recesses within the patterned members of Kelly. As with Kelly's pillars, these recesses are necessary in order to align the trays on the tops of the cans or bottles (See. Col. 1, lines 38-41).

Hammett is a design patent which illustrates a beverage tray. The beverage tray has rounded projections extending from the bottom of the tray and it lacks circular depressions within the bottom of

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the tray (See Figs. 1-5). One of ordinary skill in the art would not have been motivated to modify Kelly's pillars to incorporate Hammett's rounded edges because Kelly's pillars are strategically placed and shaped to prevent collapse or misalignment of the upper tray on the lower tray and they retain the bottles or cans in the tray (See Col. 2, lines 40-50).


Accordingly, it is the Applicants' position that the applied reference is insufficient to establish prima facie obviousness and that the Examiner's rejection on this ground is untenable and should be withdrawn.

In summary, it is submitted that Applicants' claims presently in the application are patentable distinct over the prior art of record. Thus, it is submitted that the present application is in a condition for allowance and favorable action thereon is respectfully requested. The Examiner is invited to telephone the undersigned at his convenience should only minor issues remain after consideration of the present amendment to permit early resolution of the same.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: 770-587-8620.

Respectfully submitted,
TIMOTHY P. CLARE ET AL.

By: 
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